MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.332 OF 2006

Yasmin Adil Majoo Petitioner

versus

Tirupati Mahalaxmi Co-operative Housing Society Ltd. & others Respondents

Mrs.G.P.Bharucha for petitioner.

Mr.K.S.Bapat i/by M/s.Desai & Desai Associates for respondents.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

PC :

1. The submissions of the learned counsel appearing for the parties were heard on 13th April 2007 and this contempt petition was kept today for dictation of order. As a request was made by the learned counsel for the petitioner for allowing her to make further submissions, she was allowed to make further submissions at length.

2. The petitioner has alleged in this contempt

petition the breach of an interim order dated 3rd March 2003 passed by the learned Judge of the Co-operative Court, Mumbai as well as breach of the judgment and order dated 3rd March 2005 passed by the learned Judge of the Co-operative Court-II, Mumbai in a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 filed by the petitioner against the first respondent society. The second respondent is the Chairman of the first respondent society and the third respondent is the Honorary Secretary of the first respondent society.

3. The petitioner is a member of the first respondent society and by virtue of being a member the petitioner is occupying a flat in the building of the said society. According to the case of the petitioner, the first respondent society has allotted her a parking space No.233 on payment of a certain amount. The cause of action for filing the dispute arose as according to the case of the petitioner, her car which was parked in the parking space allotted by the first respondent society got damaged as the children of the members, their servants and outsiders are playing cricket and football in the car parking lot. The interim order dated 3rd March 2003

passed by the learned Judge of the Co-operative Court reads thus :-

> "Opponent society is hereby restrained from allowing children to play cricket and hockey in space reserved for parking. In other respect, interim application rejected. No order as to costs."

4. The operative order of the final order passed by the Co-operative Court reads thus:-

> "1) It is hereby declared that the disputant is entitled to claim declaration for protection of her car and its occupants from the society and as such the opponent society is hereby directed to give full protection permanently of her car and its occupants.
>
> 2) It is also hereby held that the disputant is entitled to erect and fix steel grill with a metal roof/sheet for her car at parking space No.233 by following due procedure of law as per the provisions of the Act, Rules and the by-laws of the society;
>
> 3) Order passed on interim application at Exh.5 on 3/3/2003 is hereby confirmed permanently.
>
> 4) Opponent society is hereby directed to pay costs of this dispute of Rs.1310/- to the disputant and bear its own costs.
>
> 5) Award be drawn accordingly and transfer Court fee deposit to Government Account."

5. The grievance of the petitioner in short is

that no arrangements have been made by the respondents for implementation of clause no.1 of the operative part of the order dated 3rd March 2005. The submission of the learned counsel for the petitioner is that though repeatedly letters were written by the petitioner to the respondents, they have not disclosed as to what steps the first respondent society has taken to give full protection on permanent basis to the petitioner's car. The learned counsel for the petitioner submitted that in the petition she has suggested the steps which the first respondent can take for implementation of clause no.1 of the operative part of the order dated 3rd March 2005.

6. The learned counsel for the petitioner has invited my attention to the material averments made in the petition which allegedly disclose the breaches committed by the respondents of the aforesaid orders. It is stated that on 6th June 2005, six children residing in 'B' wing of the building of the first respondent society were found playing in the parking lot. The allegation is that when the petitioner brought to the notice of the parents of the children the fact of committing breach of the order of the Co-operative Court, the parents informed the

petitioner and her son that they had not been informed by the first respondent society about the order of the Court. A reliance is placed on letters written by the petitioner pointing out that no steps were taken by the first respondent to implement the order of the Co-operative Court.

7. It is alleged in the petition that on 15th March 2006 in the afternoon a function was organised by the first respondent on account of Holi with a Buffet Lunch in the car parking lot. As a result of organisation of the said function, the members along with their children and outsiders gathered in the car parking lot of the first respondent society. It is stated that in fact the first respondent society had invited the members to the Holi function. On that day the petitioner observed that six small children were playing with ball right next to the her car and about six to seven older boys were pushing one another near the car. It is alleged that at that time the second respondent defiantly refused to acknowledge the order of the Court. It is alleged that the second respondent cited the case of Jessica Lal and observed that there is nothing the Court could do and everything was in the hands of the society. It is further alleged that

on 13th June 2006 in the afternoon, the petitioner found two girls playing Badminton in the society's car parking lot and noticed that during one of the pauses, they had put their badminton rackets on one of the cars. It is alleged that when the petitioner went to the car parking lot, she found that even a third girl had joined them. Similarly, it is alleged that on 13th July 2006 she observed that a boy was playing with a ball in the car parking lot. It is alleged that from time to time correspondence has been made by the petitioner with the second and third respondents and they have refused to accept and act upon the orders of the Co-operative Court.

8. There is a reply filed by the second respondent as well as third respondent. In the said reply they have denied the material averments made in the petition. It is stated in the affidavits that adequate security is provided to the petitioner's car and no damage has been done either before filing of the dispute in the Co-operative Court or thereafter. The second respondent has referred to an incident where the petitioner and her son came down flourishing papers and demanded that the Holi function which

was in progress should be stopped. It is pointed out that when the respondents made attempts to pacify them, the petitioner and her son picked up a rod and swept the same on the table on which glasses and plates were kept by the caterer and as a result two to three dozen pieces were destroyed. This incident is denied by the petitioner by filing a rejoinder. It is stated in the reply of the second respondent that on 28th May 2003 a notice was published by the first respondent incorporating therein the operative part of the order dated 3rd March 2003 passed by the Co-operative Court.

9. I have considered the submissions. The first respondent society is a large society consisting of 142 flats and thus there are 142 members of the first respondent society. There appear to be large number of parking spaces available in the property of the society as according to the petitioner the parking space no.233 has been allotted to her. The first part of the breach alleged is of order dated 3rd March 2003 which has been confirmed by the final order dated 3rd March 2005. The said order restrains the first respondent society from allowing the children to play cricket and hockey in the space reserved for

parking. There is no allegation in the petition that the first respondent society permitted the children of the members to play cricket and hockey in the space reserved for parking. In fact, there is no specific allegation made in the petition that after order dated 3rd March 2003 was passed by the learned Judge of the Co-operative Court, any child has played cricket or hockey in the space reserved for parking. The incident referred to in the petition is of two or three girls playing badminton in the parking area. Another incident referred to is that six children residing in the B-Wing of the society were found playing in the parking lot. The third incident complained of is holding a Holi function in the car parking lot. Thus, there is no specific allegation of breach of the order dated 3rd March 2003 passed by the Co-operative Court which has been confirmed by the final order. There is no specific averment made that any one was playing cricket or hockey in the parking lot or that first respondent society permitted any one to do so. To the affidavit-in-reply of the second respondent a copy of the notice dated 28th May 2003 has been annexed which shows that the members of the society were informed about the order dated 3rd March 2003. It must be noted

here that the injunction granted by the Co-operative Court on 3rd March 2003 is not against the members or the children but the injunction is a limited injunction restraining the first respondent society from allowing the children to play cricket and hockey in the space reserved for parking. It is impossible to come to a conclusion that there is any deliberate or wilful breach of the said order of the Co-operative Court on the part of respondents.

10. The second grievance is regarding failure to make arrangements for giving protection to the petitioner's car. It must be noted here that there is no allegation in the petition that the car of the petitioner has been damaged in any manner. Had there been any incident of causing any damage to the car of the petitioner, then there would have been some justification in making a grievance about the breach of clause no.1 of the operative part of the order dated 3rd March 2005. The very fact that till today there is no damage to the car of the petitioner after the said order was passed by the Co-operative Court shows that there is no merit in the contention of the petitioner that no arrangements have been made by the first respondent for giving

protection to the petitioner's car. Therefore, it cannot be said that there is any breach committed by the respondents of clause no.1 of order dated 3rd March 2005. In any event, there is no deliberate or wilful breach of the said part of the order on the part of the respondents.

11. The other averments in the petition and the correspondence annexed to the petition as well as rejoinder relate to what steps the first respondent society can take for implementation of the order passed by the Co-operative Court. The petitioner has invoked the jurisdiction of this Court under Contempt of Courts Act, 1971. The limited jurisdiction which this Court exercises is to ascertain whether there is any deliberate or wilful breach of the order of the Court on the part of respondents. It is the duty of the respondents to abide by the orders passed by the Co-operative Court. However, it is not the function of this Court to lay down any norms or to suggest what steps the respondents should take for the implementation of the order of the Co-operative Court. This is something which is beyond the scope of contempt jurisdiction.

12. In the affidavits filed by the second and

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third respondents an assurance has been given that all care has been taken to protect the petitioner's car. An assurance is also given that the members are informed about the orders passed by the Co-operative Court.

13. No case is made out for taking action under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India. Notice issued to the respondents is discharged. Contempt petition is disposed of. Certified copy of the order is expedited.

(A.S.OKA, J.)